

### § 21.33

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

(3) The application is entitled to comparative consideration (under § 21.31) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 21.31) and the applicants have chosen the comparative evaluation procedure of § 21.35 but the Commission deems such procedure to be inappropriate.

(f) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this rules part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 21.35, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio

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service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of part 1 of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985]

### § 21.33 Grants by random selection.

(a) If an application for an authorization for a Multichannel Multipoint Distribution Service (MMDS) station or for a Multipoint Distribution Service (MDS) H-channel station is mutually exclusive with another such application, and satisfies the requirements of §§ 21.31 and 21.914, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.824 of this chapter.

(b) Renewal applications shall not be included in a random selection process.

(c) If Multipoint Distribution Service applicants enter into settlements, the applicants in the settlement must be represented by one application only and will not receive the cumulative number of chances in the random selection process that the individual applicants would have had if no settlement had been reached.

[58 FR 11798, Mar. 1, 1993, as amended at 61 FR 26674, May 28, 1996]

### § 21.34 [Reserved]

### § 21.35 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the competitive bidding process or random

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selection process do not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

(1) The applications are entitled to comparative consideration pursuant to §21.31;

(2) The applications have not been designated for formal evidentiary hearing; and

(3) The Commission determines, initially or at any time during the procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant under paragraphs (a) and (b) of §21.32.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of the applicant's right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and the principal's attorney if represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning the applicant's proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants shall have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision shall be considered final.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5994, Feb. 13, 1985; 52 FR 37780, Oct. 9, 1987; 60 FR 36552, July 17, 1995]

### §§ 21.36–21.37 [Reserved]

#### LICENSE TRANSFERS, MODIFICATIONS, CONDITIONS AND FORFEITURES

### §21.38 Assignment or transfer of station authorization.

(a) No station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding any such license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval shall include any and all transactions that: